State of New Hampshire

PUBLIC EMPLOYEE LABOR RELATIONS BOARD

KEENE EDUCATION ASSOCIATION/NEA-NEW HAMPSHIRE Complainant v. KEENE SCHOOL BOARD Respondent	CASE NO. T-0282:9 DECISION NO. 90-54

APPEARANCES

Representing Keene Education Association/NEA-NH:

Mary E. Gaul, UniServ Director

Representing Keene School Board:

Douglas S. Hatfield, Jr., Esq., Counsel
Margaret Ann Moran, Esq.

Also appearing:

Bill Harris, K.E.A.
Raynor R. Smith, Jr., K.E.A.
Bob Ross, K.E.A.
Donald Askey, K.B.E.
Gary Tochterman, K.B.E.
Patricia Trow Parent, K.S.D.
Kathryn Kendall, K.B.E.
John Wrigley, Esq.
Hugh Watson, N.H.S.B.A.

BACKGROUND

On December 18, 1989 the Keene Education Association/NEA-NH (Association) filed unfair labor practice charges against the Keene School Board (Board) charging a violation of 273-A:II (a), (c), (e), (g), (h) and (i). The Association stated that a tentative agreement had been reached in an ongoing contract dispute and although the Board accepted the agreement, the vote was not unanimous. The majority of the board voted for the tentative agreement but several members voted against the tentative agreement or abstained from voting, specifically member Donald Askey who publicly opposed the agreement in the press and in radio appearances and in a newspaper article clearly displayed anti-union animus and contained false statements. The Association

requested the Board respond, in writing, to Member Askey's action and the Board declined. The Association contends that Member Askey's actions must be construed as failure to bargain in good faith and the Board's refusal to respond to his statements constituted a breach of the agreement. Board Member Andrea Scranton urged voters to defeat the agreement in a letter to the Keene Sentinel in December of '89 and Board Agent John Wrigley's statement letter to the Keene Sentinel in December of '89 and Board Agent John Wrigley's statement at a public meeting that contrary to PELRB's decision in the Sanborn case, a multi-year agreement could be voided in succeeding years was misleading. Board Member Tochterman told those assembled that the Board intended to honor its multi-year agreement.

The Association also alleged that the Board filed a "retaliatory" request for injunctive relief with the Superior Court when a number of teachers called in sick on December 13, 1989.

The Board accused the teachers of engaging in a concerted action even though the Association in no way supported or promoted an illegal conduct on the part of its members.

The Association requested PELRB order the Board to (1) bargain in good faith; (2) support the tentative agreement reached; (3) pay costs of processing the unfair labor charge; (4) retract and repudiate the statements made by members Askey and Scranton; (5) withdraw its retaliatory petition; and (6) call a special school district meeting so that full and fair consideration may be given to the tentative agreement.

The original unfair labor charge was amended withdrawing the charge against John Wrigley and reemphasizing the Board's retaliatory action in seeking injunctive relief.

Hearing in this matter was held on April 12, 1990 in the PELRB office with all parties represented on the unfair labor charge and counter-charge filed.

The issues in this case are: Did the School Board bargain in good faith? and Did the School Board support the tentative agreement publicly and at the District Meeting?

The Association argued that the Board failed to support the agreement reached in November '89 based upon a factfinder's report; that the Board's vote was 5 to 2 in favor; that one of the opposing vote was cast by Member Askey who later made statements in the press and over the radio urging voters to vote against the agreement; and, that as a Board Member, Mr. Askey waived his right to publicly object after the majority voted for approval.

Witness William Harris, President of the Association, testified as to the procedure followed in negotiations prior to the Board's approval of the agreement; his version of the radio appearance of Member Askey and newspaper articles; and arrangement made for Board members & teachers to appear at joint meetings. He presented a schedule of meetings jointly sponsored and partially attended by Board members starting November 20, 1989 and ending December 11, 1989 prior to the District meeting, December 12, 1989 which represented a joint effort on the part of the parties to promote the agreement to the voters. He offered testimony from the District meeting on December 12, attended by approximately 2,000 and resulting in a vote of 1,200 to 800

defeating the factfinder's report; advertisements in the Sentinel in support of the Association's position (paid for by the Association) and the joint radio spots sponsored by the Association and School Board in support of the agreement. Witness Robert Ross, Chairman of the negotiating team offered testimony regarding meetings with the teachers on December 13 and disclaimed any responsibilities for the so called sick-out but stated he personally did not act to discourage sick-out.

The District motioned for dismissal on the basis that the Association failed to prove any violation of 273-A. Motion was accepted without ruling.

Margaret Moran, Esq., for the District argued that the comments made by members Askey and Scranton were protected, that they have rights as individuals under the constitution and can exercise their right of free speech, that the Board properly exercised its right to seek help from the Superior Court for a return to work from the alleged sick-out and that the court did issue a restraining order on the afternoon of December 13.

Board Member Tochterman offered testimony on the majority vote in support of the agreement which fulfilled the Board's obligation to actually support the agreement; the Board's action in joint statement of support, radio spots urging voters' attendance at district meetings and support of its position.

Witness Kathryn Kendall testified of various Koffee Klatches and other meetings in an effort to gain support for the agreement. Other teacher witnessses offered testimony of actions on December 13 regarding alleged sick-out.

Witness John Wrigley, Esq., testified as to steps taken on behalf of the School Board with regard to the December 13 action and the refusal of the Association to meet with him prior to the 3:00 p.m. scheduled union meeting to discuss proposed court action.

The District in closing statements, questioned whether;

(1) A board member could be denied his constitutional right to speak out?

(2) Whether the Board acted in good faith in the numerous actions it took to obtain support for the tentative agreement?

(3) And, was the Board's pursuance in Superior Court of the alleged sick-out, job action, retaliatory?

FINDINGS OF FACT

The PELRB makes the following findings in substitution for the parties requests;

1. The School Board did bargain in good faith by substantiating its actions in supporting the factfinder's report and the tentative agreement reached.

2. The actions taken by the Board in support of the agreement were joint meetings with various groups, official positions taken in the newsprint and support in radio talk shows, this support was substantiated by tapes of radio programs and witnesses unrefuted testimony.

The evidence clearly showed that the School Board lived up to their obligation to make a good faith effort to publicly support the agreed upon settlement, as a matter of fact, they went well beyond what most management teams would have done; however, I feel that Mr. Askey and Ms. Scranton violated the contract and the law when, in their capacity, as School Board members they publicly criticized the settlement, they in effect watered down or possibly negated the Board's action.

While neither I nor the P.E.L.R.B. are authorized to interpret the Constitution of the United States, I feel that the two dissident Board members accepted limits on their freedom to express their individual views when they accepted those positions. They had adequate opportunity to convince the majority of the board of their position during the course of negotiations. They had the opportunity of setting ground rules requiring a unanimous vote of the Board before an agreement would be reached with the union. Failing to do so, they were obligated to refrain from public comments until after the annual School meeting.

This situtation is commonly faced at the end of negotiations in both the public and private sector. It is faced by both management and the union who must go back to their respective voting authorities with a recommendation for an agreed upon settlement. If they can't agree upon a settlement, they shouldn't be bringing it back. However if a "dual message" is brought back, one team is put in the position of dealing with two negotiation teams. Unions are often brought up on unfair labor charges for acting in bad faith by agreeing to a settlement and then convincing the membership to reject the agreement. A notable case of this was the PATCO situation in 1981 in which the union was required to recommend the settlement to their membership. In this case the membership ultimately rejected the settlement, however a public position was required and there was no mention of First Amendment restrictions at that time.

It is not uncommon when accepting a position or a job that one has to accept reasonable limits on public pronouncements and that one is apt to be held accountable for exceeding those limits. In this case those limits were consciously accepted by the very Board which Mr. Askey and Ms. Scranton were a key part of. I feel that they should be charged with an unfair labor practice and be publicly notified to cease this kind of activity in the future.

While there was not enough evidence submitted to find the union guilty of a work stoppage, enough circumstantial evidence was presented which would have allowed the School Board to discipline those individual employees absent from school who couldn't prove that they were sick. The Board however, most likely in the spirit of not aggravating a volatile situation, chose not to pursue discipline. Should something of this nature happen again, they have a remedy at their disposal.

3. The School Board have an obligation to actively support an agreement reached by the parties in all forums and its majority did so.

4. There was no agreement by the parties in writing to limit discussion after the factfinder's report and a majority cannot silence a minority when the issue becomes public.

5. All parties were without restriction to state their respective positions in the press and radio. The majority spoke for the Board and properly pursued its support of the majority position.

6. The questions of pursuance of the issue before the court does not violate 273-A:1 I the court having rendered its decision, the issue is now MOOT before this Board.

ORDER

The unfair labor practice charges are hereby DENIED and case DISMISSED.

Signed this 27th day of July, 1990.

EDWARD J. HASELTINE
Chairman

Chairman Edward J. Haseltine presiding. Chairman Edward J. Haseltine and Seymour Osman voting in favor. Member Daniel Toomey dissenting. Also present, Executive Director, Evelyn C. LeBrun.

DISSENT

Member Toomey dissents for the following reasons:

The Keene Teachers Association contended that an unfair labor practice was committed by the Keene School Board for the following reasons: (1) the Board allegedly was remiss in public support of their contract settlement prior to the annual school meeting; (2) that two of the school board members publicly criticized the settlement, even though there was a contract clause which said that the school board would "make a good faith effort to secure the funds necessary to implement"...any agreement made between the negotiating teams of both parties prior to the annual School meeting.

The School Board countered with an unfair labor practice charge which contended that a one-day "sick out" by a large number of the leadership was an illegal work stoppage which violated the contract and RSA 273-A. The Board also contended that Members Donald Askey and Andrea Scranton had a First Amendment right to publicly dissent to the agreed upon settlement.